
ADMINISTRATIVE HEARINGS FOR MDHS SUBGRANT MANUAL

TITLE 18: MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

PART 23: DIVISION OF ADMINISTRATIVE HEARINGS

PART 23 CHAPTER 1: ADMINISTRATIVE HEARINGS FOR MDHS SUBGRANT
MANUAL

1. GENERAL

An administrative hearing provides the right to a fair and impartial hearing in contested cases involving disputes that include subgrants and contracts and other appropriate issues as determined on a case-by-case basis ~~and approved by the Executive Director of Mississippi Department of Human Services (MDHS) or an authorized executive designee~~. It is an informal proceeding that gives both parties their due process rights and a forum to provide evidence.

2. OVERVIEW

The Mississippi Administrative Procedures Law generally defines a contested case as a proceeding in which the legal rights, duties, or privileges of a party are required by rules, regulations, or statutes to be determined by an agency following opportunity for a hearing, other than disciplinary proceedings and agency actions involving only employees of an agency. Individuals shall not be discriminated against on the basis of race, color, national origin, religion, sex, gender identification, age, sexual orientation, gender identity, or disability in any provision of this policy.

3. GLOSSARY OF TERMS

- a) **Administrative Hearing Process:** the established procedure to provide a subgrantee an opportunity to appeal an adverse decision.
 - i. **Agency Appeal Level One (AAL-I):** The first level of agency appeal, which occurs upon the claimant's timely written request. The AAL-I is an informal telephonic meeting between the subgrantee and ~~an attorney in the Executive Director's office or to~~ a designated agency attorney representative to attempt to resolve the issue(s). If the issue(s) is not resolved after the AAL-I to subgrantee's satisfaction, the subgrantee may request an Administrative Hearing, which is the final level of agency review.
 - ii. **Administrative Hearing (AH):** The final level of review within MDHS, which occurs upon the subgrantee's timely written request. The AH will be held at the MDHS state office and shall be conducted by the ~~MDHS Executive Director or executive~~ designated hearing officer.
- b) **MDHS Subgrant Manual:** ~~A handbook developed by MDHS that implements the agency's policies and procedures that are applicable to MDHS subgrantees and to any lower tier subrecipients.~~ A policy manual developed by MDHS that implements the agency's policies and procedures that are applicable to MDHS subgrantee agreements and any sub-recipient lower-tier agreements.
- c) **Prehearing Conference:** An informal conference that is scheduled at the discretion of the hearing officer to resolve issues of procedure, jurisdiction or representation, or to clarify other issues prior to the hearing.
- d) **Subgrant:** An award provided through a contractual agreement by a pass-through

entity (MDHS) to a subgrantee for the subgrantee to carry out part of a Federal award received by MDHS. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

- e) **Subgrant Agreement:** Contractual arrangement that sets forth specific programs, activities, and guidelines for the use of subgrant funds which may include the following documents: MDHS Subgrantee/Agreement Manual Acceptance Form, Certificate of Adequate Fidelity Bonding Form, Certifications Regarding Unresolved Audit or Monitoring Findings or Litigation, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters, Drug-Free Workplace Requirements, Standard Assurances, Scope of Services, Subgrant/Agreement Form, Indirect Cost Rate documents (if applicable), Budget Narrative, Cost Summary Support Sheet, Budget Summary, Subgrant/Contract Signature Sheet and Subgrant/Contract Modifications (if applicable).
- f) **Subgrant Agreement Modification:** ~~Sets forth monitoring guidelines for use by the grantor agency when monitoring subgrantees and lower tier subrecipients. (See Monitoring section of MDHS Subgrant Manual.)~~ A contractual agreement that alters or amends any subgrant or agreement that has been approved by appropriate MDHS personnel.

4. BASIS FOR AN APPEAL

~~For an agency appeal to commence it must be a matter that can be reviewed as a contested case, or under a federal statute, state statute, regulation, or policy and there must be an adverse decision that affects the subgrantee.~~

~~If the agency appeal arises from monitoring findings, a subgrantee shall have fifteen (15) business days from receipt of the 'Initial Report of Findings and Recommendations' to provide an initial response or dispute the findings. If a second response to the monitoring findings is required, subgrantees may submit a dispute within ten (10) business days for secondary response if no dispute was raised in their initial response. (See Monitoring Section of MDHS Subgrant/Agreement Manual). If the subgrantee is still unsatisfied after the response, the subgrantee may start the agency appeal process.~~

The appeal must be a matter that can be reviewed as a contested case, or under a federal and/or state statute, regulation, and/or policy and there must be an adverse decision that affects the subgrantee. For example, the subgrantee may dispute monitoring findings/questioned costs through a subgrant appeal.

5. TIME LIMITS FOR AGENCY APPEAL PROCESS

- a) ~~A subgrantee who seeks to dispute an appealable decision must submit a written request for an AAL I received at MDHS within thirty (30) calendar days following the notification date on the adverse act letter. Failure to submit a timely written request shall be construed as a waiver of the subgrantee's right to appeal, and shall serve as a procedural bar to appeal~~

the agency decision.

- b) ~~If the subgrantee seeks to dispute the decision in the AAL-I, the subgrantee must submit a written request for an Administrative Hearing within fourteen (14) calendar days of the date on the AAL-I letter of decision. The subgrantee may not initiate an Administrative Hearing until the subgrantee has received an adverse decision in an AAL-I. In the written request, a subgrantee must explain the reason(s) the subgrantee believes the AAL-I is in error, enclose a copy of all correspondence relevant to this decision, and attach a copy of the MDHS's notice of an adverse act letter.~~
- a) The subgrantee has thirty (30) calendar days from the date the Final Decision Letter is issued to submit a written request for an AAL-I.
- b) If the subgrantee seeks to dispute the decision in the AAL-I, the subgrantee must submit a written request for an Administrative Hearing within fourteen (14) calendar days of the date on the AAL-I letter of decision. The subgrantee may not initiate an Administrative Hearing until the subgrantee has received an adverse decision in an AAL-I.
- c) Failure to submit a timely written request shall be construed as a waiver of the subgrantee's right to appeal and shall serve as a procedural bar to appeal the agency decision.

6. WRITTEN REQUEST REQUIRED FOR APPEALS

In order for the subgrantee to formally initiate the agency appeals process, the subgrantee must submit a written request for the appropriate level of appeal. The written request must contain the subgrantee's name, the agency decision the subgrantee seeks to dispute, and the subgrantee's signature. A written request should be submitted to the ~~Executive Director~~ Division of Administrative Hearings for AAL-I. After exhausting the first level of appeal, if the subgrantee wishes to pursue an Administrative Hearing, the subgrantee must make an additional written request for a hearing to the attention of the ~~Executive Director~~ Division of Administrative Hearings of MDHS. The subgrantee may be represented by anyone he/she designates; however, he/she must make the designation in writing and submit ~~such to the Executive Director~~ such to the Division of Administrative Hearings of MDHS.

7. ACKNOWLEDGEMENT OF APPEAL REQUEST

When the subgrantee makes a timely request for an AAL-I, the Director of Administrative Hearings Divisions of MDHS shall, within ten (10) business days of receipt, send a letter acknowledging receipt of the request ~~within ten (10) business days~~, and setting a date and time for an appeal conference. The letter shall state that the subgrantee has the right to reschedule the appeal conference date and time, and shall give specific instructions for doing so. The subgrantee shall have the responsibility for rescheduling the appeal conference any time after receipt of the acknowledgement letter, and twenty-four (24) hours before the scheduled appeal conference date and time.

When the subgrantee makes a timely request for an Administrative Hearing in the final appeal level, the Director of Administrative Hearings Division of MDHS shall, within ten (10) business days of receipt, send a letter acknowledging receipt of the request and setting a date and time for the hearing within ten (10) business days. The letter shall state ~~a date and time for the hearing~~, and that the subgrantee has the right to reschedule the hearing with specific instructions for doing so. The letter shall state that the subgrantee may reschedule the hearing any time after receiving the letter of acknowledgement and twenty-four (24) hours before the hearing time and date.

Written requests for appeals and requests to reschedule can be sent via email to subgrants.hearings@mdhs.ms.gov or by mail to the Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.

8. AGENCY APPEALS PROCESS, LEVEL I (AAL-I) AND LEVEL II, ADMINISTRATIVE HEARING

- a) **AAL-I:** The MDHS agency appeals process for subgrantees begins with the AAL-I. If a subgrantee seeks to dispute an appealable decision, the subgrantee must engage in the AAL-I process by submitting a written request, pursuant to subsection 6 of the Administrative Hearings Manual to the ~~Executive Director~~ Division of Administrative Hearings of MDHS within thirty (30) calendar days of the notification date on the adverse act letter. The Administrative Hearings Division will send the subgrantee a written notice acknowledging receipt of the subgrantee's request, and setting a date and time for the AAL-I. The AAL-I will be conducted ~~by an attorney in the Executive Director's office or an agency attorney designated by the Executive Director, and will be conducted~~ telephonically by a hearing officer within the Division of Administrative Hearings. All documents must be submitted prior to or during the AAL-I. If the subgrantee is dissatisfied with the decision in the AAL-I, the subgrantee may appeal that decision by submitting a written request within fourteen (14) calendar days of the notice of the adverse decision to MDHS to initiate an Administrative Hearing.
- b) **ADMINISTRATIVE HEARING:** The final level of agency appeal occurs in the Administrative Hearing. The Director of Administrative Hearings will send the subgrantee a written notice acknowledging receipt of the subgrantee's request, and setting a date and time for the Administrative Hearing. The Administrative Hearing will be ~~conducted by the Executive Director of MDHS or an executive designated~~ a hearing officer and will be ~~conducted~~ held at the State Office of MDHS. All documents must be submitted prior to or during the hearing.

9. ADMINISTRATIVE HEARING PARTICIPANTS

- a) The respondent, ~~MDHS Executive Director and/or authorized executive designee a designated agency representative. MDHS Funding Division Director, MDHS legal representative, and any other appropriate MDHS representatives deemed necessary by the~~

~~Executive Director may be present for the Administrative Hearing.~~

- b) The petitioner and a legal representative, if any, must attend the hearing.
- c) Witnesses for both the respondent and the petitioner shall also be present to testify when necessary.

10. REPRESENTATIVE FOR PETITIONER

Any petitioner may appear in person; or be represented by an officer, board member, or bona fide employee in its stead, or be represented, at the subgrantee's own expense, by a licensed attorney authorized to practice law in the State of Mississippi upon presentation of written authority to the ~~Executive Director of MDHS~~ Division of Administrative Hearings. The subgrantee may be represented during any stage of the agency appellate process.

11. RESPONDENT'S LEGAL REPRESENTATION

As respondent, MDHS will designate an agency representative. ~~be represented by an attorney with the Attorney General's office who normally provides counsel to the MDHS Executive Director or the affected programmatic division.~~

12. INDIVIDUAL'S RIGHTS AND RESPONSIBILITIES

The subgrantee has the following rights in the two (2) levels of the administrative hearing process:

- a) To present facts about his/her circumstances orally or through documentation; and
- b) To have an attorney, relative, or friend to assist him/her if he/she wishes or to present the facts on his/her behalf.

The subgrantee has the following responsibilities in the two (2) levels of the administrative hearing process:

- a) To reschedule the Administrative Hearing if necessary, by contacting the appropriate MDHS staff at least twenty-four (24) hours before the designated start time of the hearing. Failure to be present for the hearing without having rescheduled according to policy, will result in dismissal of the appeal.
- b) To provide the ~~Executive Director of MDHS~~ Division of Administrative Hearings with a written designation of agency twenty-four (24) hours before the start time of the hearing if a non-attorney will attend the hearing on the subgrantee's behalf.
- c) To provide or ensure that subgrantee's attorney provides the ~~Executive Director of MDHS~~ Division of Administrative Hearings with an 'Entry of Appearance' if the subgrantee will be represented by a licensed attorney.

13. PREHEARING PROCEDURE

On the motion of the petitioner, the respondent, or the hearing officer, the parties may be directed to appear for a prehearing conference for the purpose of formulating issues and such other matters that may aid in the simplification of the proceedings and the disposition of the matters in controversy. ~~The hearing officer may direct that other certain information be submitted, as~~

specified in MDHS-AP-18.

14. PREPARATION OF CASE FILE AND WRITTEN ARGUMENTS BEFORE AN ADMINISTRATIVE HEARING

- a) The petitioner should provide a thorough and detailed statement of the facts giving rise to the dispute and develop legal arguments on the issues raised by the facts. Whenever possible, the petitioner should stipulate, where appropriate, material facts and provide copies of documents that have not been submitted previously. The hearing officer can dismiss an appeal or proceed to a recommended decision if a party fails to comply with an order, deadline, or other requirement. Only the hearing officer may grant an extension of time, based upon a written request submitted prior to the established deadline.
- b) The petitioning subgrantee, within thirty (30) calendar days after requesting an Administrative Hearing, should submit an original and one working copy to the hearing officer, with a copy to the respondent, of the following: 1) a chronological case file containing numbered, tabbed, and indexed documents supporting the petitioner's position, and 2) a written statement of the petitioner's arguments (petitioner's brief) concerning why the respondent's adverse action is considered in error.
- c) The respondent, within thirty (30) calendar days after receiving the petitioner's submission, shall present the following to the hearing officer, with a copy to the petitioner: 1) a tabbed and indexed supplement to the case file that does not duplicate documents submitted by the petitioner, and 2) a written statement (respondent's brief) responding to the petitioner's brief.
- d) Within fifteen (15) calendar days after receiving the respondent's submission, the petitioner may submit a short reply.

15. FILING OF DOCUMENTS

All documents relating to any pending proceeding must be submitted to the Director of Administrative Hearings Division of MDHS. The documents are considered filed only when received.

16. TIME AND PLACE LOCATION OF ADMINISTRATIVE HEARING

All acknowledgement letters and notices of hearing shall be sent via United States Postal Service to the subgrantee's last reported address at least ten (10) business days before the scheduled hearing day. The Administrative Hearing shall be held at the State Office of MDHS.

17. AUTHORITY AND RESPONSIBILITY OF THE HEARING OFFICER

- a) The hearing officer has delegated powers, including, but not limited to, the following:
 - i. to issue orders;

- ii. to administer oaths;
 - iii. to call, hear and examine witnesses;
 - iv. to take steps necessary for the conduct of an orderly hearing;
 - v. to rule on requests and motions;
 - vi. to dismiss cases for failure to meet deadlines and other requirements;
 - vii. to close, suspend, or remand a case for further action;
 - viii. to waive or modify procedures with notice to parties;
 - ix. to compile the record of the proceedings;
 - x. make a recommended decision or a recommended reconsideration decision; and
 - xi. to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.
- b) The hearing officer shall enjoy absolute immunity from all liability and shall have decisional independence throughout this process and under these administrative proceedings.

18. INFORMAL DISPOSITION

Informal disposition may be made of any case by written stipulation, agreed settlement, consent order, or default.

19. POSTPONEMENT/CONTINUANCE

The hearing officer may grant a postponement or continue the hearing based upon a written, advance request submitted to the Director of Administrative Hearings Division of MDHS.

20. MOTIONS

Any motion relating to a pending proceeding, unless made during a hearing, must be in writing and specify the desired relief and the specific reasons and the basis for this relief.

21. ADMINISTRATIVE HEARING IN GENERAL

- a) Hearings will be ordinarily open to the general public and as informal as reasonably possible.
- b) The hearing officer may request the parties to submit written statements of witnesses prior to the hearing so that the hearing will primarily be concerned with cross-examination and rebuttal.
- c) All participants and observers must show proper dignity, courtesy, and respect for the hearing officer and each other.
- d) The hearing is not to be conducted as a formal court hearing and the hearing officer is not required to follow the Mississippi Rules of Civil Procedure or the Mississippi Rules of Evidence.

22. CONDUCT OF ADMINISTRATIVE HEARING

- a) Subject to the hearing officer's ruling and recommended decision, opportunity must be given to all parties to respond and present evidence and argument on all issues involved and to call witnesses.
- b) A recording of each hearing should be made.
- c) If a party fails to appear, it may forfeit all rights and be assessed the court reporter fee, if present.

23. ORDER OF ADMINISTRATIVE HEARING

- a) The hearing officer may confer with the parties prior to the hearing to explain the order of the proceeding, admissibility of evidence, to discuss the number of witnesses and other matters.
- b) The hearing officer calls the hearing to order; introduces himself/herself and gives a brief statement of the nature of the proceeding; if applicable, calls upon petitioner's counsel and respondent's counsel to introduce themselves; states what documents the record contains; may administer oaths or affirmations or may ask court reporter to do so, if available; asks the parties whether they wish to have all witnesses excluded from the hearing room except during their testimony; entertains preliminary motions, stipulations, or agreed orders; calls for opening statements by each party; questions witnesses at will, and adjourns the hearing after all evidence has been presented.
- c) During testimony, the petitioner and the respondent question witnesses, cross-examine the other party's witnesses, and redirects if necessary. The petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.

24. RECOMMENDED DECISIONS AND FINAL DECISIONS

- a) The hearing officer shall have the responsibility of preparing a statement summarizing the facts brought out in the hearing, indicating the policy governing the issue at hand, and making a recommended decision based on the evidence presented. The recommended decision shall be based only on evidence, testimony, and documents presented at the hearing.
- b) Following the hearing adjournment, the hearing officer will forward both the record and recommended decision to the ~~MDHS-Executive Director~~ or designated executive agency representative for adoption, modification, or reversal. The final order ~~of the MDHS Executive Director~~ will be mailed via United States mail to the attorney of record for the subgrantee or to the subgrantee's last known mailing address, if not represented. ~~The MDHS Executive Director's Office~~ will maintain an appropriate record of that mailing. The subgrantee or attorney of record, notified by mailing of a final decision, is presumed to have been notified on the date such notice is mailed. The decision of the ~~MDHS Executive Director~~ designated agency representative shall be final and binding.

PROGRAMMATIC ADMINISTRATIVE DISQUALIFICATION HEARING POLICY

TITLE 18: MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

PART 23: DIVISION OF ADMINISTRATIVE HEARINGS

PART 23 CHAPTER 2: PROGRAMMATIC ADMINISTRATIVE DISQUALIFICATION
HEARING POLICY

1. PURPOSE

An administrative disqualification hearing will be initiated by Mississippi Department of Human Services (MDHS) whenever ~~MDHS has~~ there is documented evidence to substantiate that a claimant of a state or federal program allegedly committed one (1) or more acts of an Intentional Program Violation (IPV) of ~~said~~ the program. The burden of proof in an administrative disqualification hearing is proof by clear and convincing evidence, in which MDHS has to prove.

~~Note: This policy does not relate to any alleged IPV's of the Supplemental Nutrition Assistance Program (SNAP). Alleged IPV's of SNAP have their own distinct and separate administrative disqualification hearing policy. Please see 'Volume V: SNAP Manual Chapter 10.'~~

2. NON-DISCRIMINATION

Individuals shall not be discriminated against on the basis of race, color, national origin, religion, sex, age, sexual orientation, gender identity, or disability in any provision of this policy.

3. DEFINITIONS

- a) **Administrative Disqualification Hearing:** A hearing initiated by MDHS whenever there is documented evidence to substantiate that a claimant of a state or federal program committed an act that constitutes a violation of ~~said~~ the regulations or any related state statute, with the exception of SNAP.
- b) **Agency Representative:** An individual from the agency or its designee who is authorized to represent the agency in an administrative disqualification hearing.
- c) **Claimant:** An applicant or recipient of a state or federal program that is accused of committing an act, in which is a violation of ~~said~~ the program policies, regulations or any related state or federal statute, with the exception of SNAP.
- d) **Clear and Convincing:** Evidence is highly and substantially more likely to be true than untrue.
- e) **Hearing Officer:** An impartial person who conducts the administrative disqualification hearing and renders a hearing decision.
- f) **Impartial:** A hearing officer is unbiased and treats all parties equally.
- g) **Intentional Program Violation:** Claimant of a state or federal program that commits an act, in which that constitutes a violation of ~~said~~ the program policies, regulations or any related state or federal statute, with the exception of SNAP.

4. CLAIMANT'S RIGHTS

The claimant who is the subject of the administrative disqualification hearing will be advised by an administrative hearing officer of the claimant's rights in connection with ~~said~~ the hearing at the time the 'Disqualification Hearing Notice' is mailed. The claimant also has the right to waive the administrative disqualification hearing, in which penalties may still be imposed.

At the administrative disqualification hearing, the hearing officer shall advise the claimant and claimant's representative, if applicable that the claimant may refuse to answer any questions during ~~said~~ the hearing.

5. RESPONSIBILITY OF MDHS

The administrative disqualification hearing will be initiated and conducted by an administrative hearing officer in the Administrative Hearings Division of the Office of General Counsel ~~the Inspector General (OIG)~~ of MDHS.

6. ADMINISTRATIVE DISQUALIFICATION HEARING NOTICE TO THE CLAIMANT

An administrative hearing officer will provide written notice to the claimant suspected of an IPV at least thirty (30) calendar days in advance of the date an administrative disqualification hearing has been scheduled. The notice will contain:

- a) The date, time and ~~place~~ location of the administrative disqualification hearing;
- b) The allegation(s) against the claimant;
- c) A summary of the evidence, and how and where the evidence can be examined;
- d) A statement concerning the claimant's right to waive the administrative disqualification hearing;
- e) A warning that a decision will be based solely on information provided by MDHS if the claimant fails to appear at the administrative disqualification hearing; and
- f) A statement that the administrative disqualification hearing does not preclude the State or Federal Government from prosecuting the claimant for an IPV in a civil or criminal court action, or from collecting the over issuance.

7. ADMINISTRATIVE DISQUALIFICATION HEARING CONTINUANCE

The administrative hearing officer may grant continuance(s) of an administrative disqualification hearing based upon a written, request that has to be submitted to MDHS Administrative Hearings Division at least seven (7) calendar days before the scheduled date of the hearing. The ~~Said~~ request can be sent via email to Admin.Hearings@mdhs.ms.gov or by mail to Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.

8. PLACE LOCATION OF ADMINISTRATIVE DISQUALIFICATION HEARING

The administrative disqualification hearing shall be held telephonically at the county MDHS office, in which the client lives, or at the MDHS State Office upon written request that has to be submitted to MDHS Administrative Hearings Division at least seven (7) calendar days before the scheduled date of the hearing. The ~~Said~~ request can be sent via email to Admin.Hearings@mdhs.ms.gov or by mail to Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.

9. AUTHORITY AND RESPONSIBILITY OF AN ADMINISTRATIVE HEARING OFFICER

An administrative hearing officer has delegated powers including, but not limited to, the following:

- a) to issue orders;
- b) to administer oaths;
- c) to call, hear and examine witnesses;
- d) to take steps necessary to conduct an orderly hearing;
- e) to rule on requests and motions;
- f) to dismiss cases for failure to meet deadlines and other requirements;
- g) to close, suspend, or remand a case for further action;
- h) to waive or modify procedures with advance notice to parties;
- i) to compile the record of the proceedings;
- j) to render a decision; and
- k) to take any other actions necessary to resolve disputes in accordance with the objectives of these procedures.

An administrative hearing officer conducts the administrative disqualification hearing as an informal proceeding, not as a formal court hearing, and is not required to follow the Mississippi Rules of Evidence or the Mississippi Rules of Civil Procedure. An administrative hearing officer shall enjoy absolute immunity from all liability and shall have decisional independence throughout this process and under these administrative proceedings.

10. INFORMAL DISPOSITION

Informal disposition may be made of any case by written stipulation, agreed settlement, consent order, or default. Informal dispositions are final and binding.

11. ATTENDANCE AT THE ADMINISTRATIVE DISQUALIFICATION HEARING

- a) The administrative disqualification hearing will be attended by an administrative hearing officer and the claimant accused of an IPV and ~~said~~ the representative, if applicable. The claimant may also bring any witnesses to assist in presenting their case.
- b) MDHS will have a representative who is familiar with the circumstances surrounding the allegation(s). The MDHS representative who investigated the allegations of the suspected intentional program violation may also be present. The MDHS representative and/or investigator will present the case on behalf of MDHS.
- c) The administrative disqualification hearing may also be attended by, at the most two (2), friends or relatives of the claimant accused of an IPV. The administrative hearing officer has the authority to limit the number of persons in attendance at the hearing if either space limitations exist, or local fire code regulations will be violated.

12. CLAIMANT’S FAILURE TO APPEAR

If the claimant fails to appear at an administrative disqualification hearing, the hearing will be conducted without the claimant present or represented. Even though the claimant is not present or represented, the administrative hearing officer is required to carefully consider the evidence and testimony presented by MDHS. The administrative hearing officer will then determine if an IPV was committed based on clear and convincing evidence.

13. HOLDING THE ADMINISTRATIVE DISQUALIFICATION HEARING

The responsibility for conducting an administrative disqualification hearing has been delegated to an administrative hearing officer who is an impartial official. The duties of an administrative hearing officer during an administrative disqualification hearing include, but are not limited to:

- a) The administrative hearing officer may confer with the parties prior to the administrative disqualification hearing to explain the order of the proceeding, admissibility of evidence, to discuss the number of witnesses and other matters;
- b) the administrative hearing officer calls the administrative disqualification hearing to order;
- c) introduces himself/herself and gives a brief statement of the nature of the proceeding;
- d) calls upon claimant and claimant’s representative, if any and MDHS’ representative to introduce themselves;
- e) ensures that all relevant issues are considered;
- f) questions witnesses at will;
- g) adjourns the administrative disqualification hearing after all evidence has been presented; and
- h) renders a final administrative disqualification hearing decision.

During testimony, the claimant and MDHS are allowed to question witnesses, cross-examine the other party’s witnesses, and redirect. The claimant and MDHS are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.

At the administrative disqualification hearing, each party, witness, attorney, representative, or any other person must show proper dignity, courtesy, and respect for the administrative hearing officer and others participating and observing the hearing. The administrative hearing officer will act as s/he deems necessary to maintain proper decorum and conduct. Actions may include, but are not limited to, recessing the administrative disqualification hearing to be reconvened at another time or excluding any party from the administrative disqualification hearing under conditions that the administrative hearing officer considers fair and just.

14. ADMINISTRATIVE DISQUALIFICATION HEARING DECISION

The administrative hearing officer will have the responsibility for preparing a decision that summarizes the facts and identifies the supporting evidence brought out in the administrative disqualification hearing, indicating the policy, regulations and/or laws governing the issue at hand and rendering a decision based exclusively on the testimony and documents presented at the administrative disqualification hearing. The determination of an IPV will be based on clear and

convincing evidence, which demonstrates that the claimant committed the act and intended to commit the act.

The administrative hearing officer will notify the claimant of the final decision by sending an ‘Administrative Disqualification Hearing Decision’ within thirty (30) calendar days from the date of the administrative disqualification hearing, specifying the reasons for the decision and identifying the supporting evidence and the pertinent federal law, regulations or policies. Additionally, the decision will include the applicable recoupment amount, disqualification length, suspension length and/or any other punishment identified within ~~said~~ the programmatic policy. The appropriate programmatic division will also be provided a copy of the ‘Administrative Disqualification Hearing Decision.’

The decision must not be in conflict with federal law, regulations, or policies. The ‘Administrative Disqualification Hearing Decision’ will be accessible to the claimant and ~~said~~ the representative for inspection or copying at any reasonable time by contacting the Administrative Hearings Division of MDHS.

15. ADMINISTRATIVE DISQUALIFICATION HEARING APPEAL

The only level of an administrative disqualification hearing appeal occurs to the ~~Senior Attorney hearing officer~~ of the Division of Administrative Hearings ~~Division of OIG of MDHS or said designee~~. If the claimant seeks to dispute the ‘Administrative Disqualification Hearing Decision’, the claimant must submit a written request to the Administrative Hearings Division of MDHS within fourteen (14) calendar days of the date of the ‘Administrative Disqualification Hearing Decision.’

After an appeal is requested, an administrative hearing officer will forward both the record and the adverse ‘Administrative Disqualification Hearing Decision’ to the ~~Senior Attorney hearing officer~~ of Administrative Hearings Division or ~~said~~ designee within fourteen (14) calendar days of receipt of appeal request from the claimant. The ~~Senior Attorney hearing officer~~ or designee ~~at that time~~ will review the record in its entirety and decide whether ~~said~~ the adverse decision should be adopted, modified or reversed. ~~Said~~ The decision will be memorialized and the claimant will be notified of the ‘Administrative Disqualification Hearing Appeal Decision’ within thirty (30) calendar days from the date the ~~Senior Attorney hearing officer~~ or designee received the appeal. The ‘Administrative Disqualification Hearing Appeal Decision’ from the ~~Senior Attorney hearing officer~~ or designee shall be final and binding.

The claimant may appeal and seek relief in a court having appropriate jurisdiction after the ‘Administrative Disqualification Hearing Appeal Decision’ is rendered.

PROGRAMMATIC ADMINISTRATIVE AGENCY APPEAL HEARING POLICY

TITLE 18: MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

PART 23: DIVISION OF ADMINISTRATIVE HEARINGS

PART 23 CHAPTER 3: PROGRAMMATIC ADMINISTRATIVE AGENCY APPEAL
HEARING POLICY

1. PURPOSE

An administrative agency appeal hearing is available for any applicant or recipient upon written request to the Division of Administrative Hearings ~~Division of the Office of the Inspector General of Mississippi Department of Human Services (MDHS)~~. ~~Said~~ The hearing provides an opportunity for a more formal review when the applicant or recipient disagrees with an adverse action that has been taken by MDHS or on behalf of MDHS. Specifically, the administrative agency appeal hearing affords the applicant or recipient the opportunity to fully describe the circumstances, present evidence and have an impartial hearing officer review and render a decision. Evidence presented in the administrative agency appeal hearing is limited to circumstances known at the time the agency decision was made. The applicant or the recipient, who has initiated the proceeding by requesting an administrative agency appeal hearing, bears the ultimate burden of proof to overturn the adverse agency decision. ~~The Said~~ burden is proof by the preponderance of the evidence standard. An administrative agency appeal hearing is also commonly referred to as a fair hearing.

Note: This policy does not relate to any adverse agency actions made concerning the ~~Supplemental Nutrition Assistance Program (SNAP) and~~ Temporary Assistance for Needy Families (TANF) programs. Administrative agency appeal hearings for ~~SNAP and~~ TANF have their own distinct and separate hearing policies. Please see refer to ~~Volume V: SNAP Manual Chapter 10 and~~ Volume III: TANF Manual-Chapter 13.

2. NON-DISCRIMINATION

Individuals shall not be discriminated against on the basis of race, color, national origin, religion, sex, age, sexual orientation, gender identity, or disability in any provision of this policy.

3. DEFINITIONS

- a) **Administrative Agency Appeal Hearing:** An informal proceeding held before an impartial MDHS administrative hearing officer, in which an applicant or recipient appeals an adverse agency action.
- b) **Adverse Agency Action:** The negative action taken by the agency on an applicant or recipient's request for programmatic services MDHS provides or services performed on behalf of MDHS.
- c) **Agency Representative:** An individual from MDHS or its designee who is authorized to represent MDHS in an administrative agency appeal hearing.
- d) **Appellant:** An applicant or recipient who requests the administrative agency appeal hearing.
- e) **Authorized Representative:** A person designated by the applicant or recipient requesting the administrative agency appeal hearing in writing or designated by statute, regulation or rule who may act on behalf of the individual at the hearing.
- f) **Good Cause:** The failure to appear for an administrative agency appeal hearing as a result of circumstances the applicant or recipient could not control.
- g) **Hearing Officer:** An impartial person who conducts the administrative agency

appeal hearing and renders a hearing decision.

- h) **Impartial:** A hearing officer is unbiased and treats all parties equally.
- i) **Preponderance of Evidence:** The greater weight of the evidence required in a civil trial for the trier of fact to decide in favor of one side or the other. This burden is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.
- j) **Programmatic Eligibility Assistance:** All eligibility programs MDHS oversees and provides with exception to ~~SNAP~~ and TANF.

4. BASIS FOR AN ADMINISTRATIVE AGENCY APPEAL HEARING

An appellant of a programmatic eligibility assistance provided by MDHS has a right to appeal concerning adverse agency actions, after all programmatic appeal avenues have been exhausted, in which includes the following:

- a) Decisions concerning eligibility for an amount from programmatic eligibility assistance;
- b) Denial of opportunity to submit an application or reapplication for programmatic eligibility assistance;
- c) Undue delay in determining programmatic eligibility and/or making ~~said~~ the benefits available; or
- d) Any other adverse action that detrimentally affects the applicant or recipient concerning programmatic eligibility assistance conducted by MDHS.

Some issues are not subject to the administrative agency appeal hearing policy, in which includes but not limited, to policies or agency actions that comply with federal regulations or state statutes.

5. TIME LIMITS FOR AN ADMINISTRATIVE AGENCY APPEAL HEARING

An appellant who seeks to dispute an adverse agency action performed by MDHS must submit a written request for an administrative agency appeal hearing within thirty (30) calendar days following the notice of ~~said~~ the adverse agency action to the Administrative Hearings Division of MDHS. The written request must contain the appellant's name, the adverse agency decision that is disputed, and the appellant's signature. The ~~Said~~ request can be sent via email to Admin.Hearings@mdhs.ms.gov or by mail to Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.

If a request for an administrative agency appeal hearing is not received within the required period and the administrative hearing officer determines good cause was not established for the failure to file timely, the individual has forfeited the right to an administrative agency appeal hearing and the agency action becomes final.

6. ADMINISTRATIVE AGENCY APPEAL HEARING NOTICE

An administrative hearing officer will provide written notice to the appellant at least fourteen (14) calendar days in advance of the date an administrative agency appeal hearing has been scheduled.

The notice will contain the date, time, and location of the administrative agency appeal hearing and the appellant's rights in connection with ~~said~~ the hearing.

7. ADMINISTRATIVE AGENCY APPEAL HEARING CONTINUANCE

The administrative hearing officer may grant continuance(s) of an administrative agency appeal hearing based upon a written request that has to be submitted to the Administrative Hearings Division of MDHS at least seven (7) calendar days before the scheduled hearing date.

8. PLACE LOCATION OF ADMINISTRATIVE AGENCY APPEAL HEARING

The administrative agency appeal hearing shall be held telephonically at the MDHS county office, in which where the appellant lives, or at the MDHS State Office upon written request that has to be submitted to the Administrative Hearings Division of MDHS not later than seven (7) calendar days before the scheduled hearing date.

9. AUTHORITY AND RESPONSIBILITY OF AN ADMINISTRATIVE HEARING OFFICER

An administrative hearing officer has delegated powers including, but not limited to, the following:

- a) to issue orders;
- b) to administer oaths;
- c) to call, hear and examine witnesses;
- d) to take steps necessary to conduct an orderly administrative agency appeal hearing;
- e) to rule on requests and motions;
- f) to dismiss cases for failure to meet deadlines and other requirements;
- g) to close, suspend, or remand a case for further action;
- h) to waive or modify procedures with advance notice to parties;
- i) to compile the record of the proceedings;
- j) to render an administrative agency appeal decision; and
- k) to take any other actions necessary to resolve disputes in accordance with the objectives of these procedures.

An administrative hearing officer conducts the administrative agency appeal hearing as an informal proceeding, not as a formal court hearing, and is not required to follow the Mississippi Rules of Evidence or the Mississippi Rules of Civil Procedure. An administrative hearing officer shall enjoy absolute immunity from all liability and shall have decisional independence throughout this process and under these administrative proceedings.

10. INFORMAL DISPOSITION

Informal disposition may be made of any case by written stipulation, agreed settlement, consent order, or default. Informal dispositions are final and binding.

11. ATTENDANCE AT THE ADMINISTRATIVE AGENCY APPEAL HEARING

- a) The administrative agency appeal hearing will be attended by an administrative hearing officer and the appellant and appellant's representative, if applicable. The appellant may also bring any witnesses to assist in presenting their case.
- b) MDHS will have a representative who is familiar with the circumstances surrounding the adverse agency action. The agency representative will be prepared to explain and defend the decision on the adverse agency action.
- c) The administrative agency appeal hearing may also be attended by, at the most two (2) friends or relatives of the appellant. The administrative hearing officer has the authority to limit the number of persons in attendance at the hearing if either space limitations exist, or local fire code regulations will be violated.

12. APPELLANT'S FAILURE TO APPEAR

If the appellant fails to appear at an administrative agency appeal hearing, the hearing will be considered abandoned. Abandonment occurs when the appellant or appellant's representative fails to appear at the hearing. The hearing will only be rescheduled if the appellant can show good cause for the abandonment. If the administrative agency appeal hearing is abandoned, the agency action shall be final and binding.

13. HOLDING THE ADMINISTRATIVE AGENCY APPEAL HEARING

The responsibility for conducting an administrative agency appeal hearing has been delegated to an administrative hearing officer who is an impartial official. The duties of an administrative hearing officer during an administrative agency appeal hearing include, but are not limited to:

- a) The administrative hearing officer may confer with the parties prior to the administrative agency appeal hearing to explain the order of the proceeding, admissibility of evidence, to discuss the number of witnesses and other matters;
- b) the administrative hearing officer calls the administrative agency appeal hearing to order;
- c) introduces himself/herself and gives a brief statement of the nature of the proceeding;
- d) calls upon the appellant and the appellant's representative, if any and MDHS' representative to introduce themselves;
- e) ensures that all relevant issues are considered;
- f) questions witnesses at will;
- g) adjourns the administrative agency appeal hearing after all evidence has been presented; and
- h) renders a final administrative agency appeal hearing decision.

During testimony, the appellant and MDHS are allowed to question witnesses, cross-examine the other party's witnesses, and redirect. The appellant and MDHS are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.

At the administrative agency appeal hearing, each party, witness, attorney, representative, or any other person must show proper dignity, courtesy, and respect for the administrative hearing officer and others participating and observing the hearing. The administrative hearing officer will act as s/he deems necessary to maintain proper decorum and conduct. Actions may include, but are not limited to, recessing the administrative agency appeal hearing to be reconvened at another time or excluding any party from the administrative agency appeal hearing under conditions that the administrative hearing officer considers fair and just.

14. ADMINISTRATIVE AGENCY APPEAL HEARING DECISION

The administrative hearing officer will have the responsibility for preparing a decision that summarizes the facts and identifies the supporting evidence brought out in the administrative agency appeal hearing, indicating the policy, regulations and/or laws governing the issue at hand and rendering a decision based exclusively on the testimony and documents presented at the administrative agency appeal hearing.

The administrative hearing officer will notify the claimant of the final decision by sending an 'Administrative Agency Appeal Hearing Decision' within fourteen (14) calendar days from the date of the hearing, specifying the reasons for the decision and identifying the supporting evidence and the pertinent federal law, regulations or programmatic policies. The appropriate programmatic division will also be provided a copy of the 'Administrative Agency Appeal Hearing Decision.'

~~The said~~ decision must not be in conflict with federal law, regulations, or programmatic policies. The 'Administrative Agency Appeal Hearing Decision' will be accessible to the appellant and appellant's representative, if applicable for inspection or copying at any reasonable time by contacting the Division of Administrative Hearings ~~Division of MDHS~~.

15. ADMINISTRATIVE AGENCY APPEAL HEARING REVIEW

The only level of administrative agency appeal hearing review occurs to the ~~Senior Attorney~~ hearing officer of the Division of Administrative Hearings ~~Division of MDHS~~ or ~~said the~~ designee. If the appellant seeks to dispute the 'Administrative Agency Appeal Hearing Decision', the appellant must submit a written request to the Division of Administrative Hearings ~~Division of MDHS~~ within seven (7) calendar days of the date of the 'Administrative Agency Appeal Hearing Decision.'

After a review is requested, an administrative hearing officer will forward both the record and the adverse 'Administrative Agency Appeal Hearing Decision' to the ~~Senior Attorney~~ Director of Administrative Hearings ~~of Administrative Hearings Division~~ or ~~said~~ designee within seven (7) calendar days of receipt of appeal request from the appellant. The ~~Senior Attorney~~ Director of Administrative Hearings or designee at that time will review the record in its entirety and

decide whether ~~said~~ the adverse decision should be adopted, modified or reversed. ~~Said~~ The decision will be memorialized, and the claimant will be notified of the ‘Administrative Agency Appeal Hearing Review Decision’² within fourteen (14) calendar days from the date the ~~Senior Attorney~~ hearing officer or designee received the review. The ‘Administrative Agency Appeal Hearing Review Decision’² from the ~~Senior Attorney~~ hearing officer or designee shall be final and binding.

The claimant may appeal and seek relief in a court having appropriate jurisdiction after the “Administrative Agency Appeal Hearing Review Decision.”²

Note: If at any point during the administrative agency appeal hearing decision process, the original adverse agency action is overturned, the designated programmatic division will take proper and appropriate measures.